IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.867 OF 2003

Shri Ramchandra Laxman Borate
& Others ..Appellants

versus

Shri Balkrishna Bapu Borate
& Others ..Respondents

Mr.K.Y.Mandlik for the Appellant

Mr.Dilip Bodake for the Respondent

Coram : S.R.Sathe, J.
Dated : 16th March, 2006

P.C.

1. Heard both the learned Advocates. Appellants, the original defendants against whom the decree for permanent injunction was passed by the trial Court and confirmed by the First Appellate Court have filed the present Second Appeal.

2. The plaintiff's alleged that the property in question was purchased by their father Bapu Nathu and their grandfather from the defendant No.1 by virtue of sale deed dated 7.4.1970 amd since then they are in possession of the suit land. Adjacent to the said land the plaintiffs are having their joint family land. The defendants started

obstructing the plaintiffs posession. Hence plaintiff filed suit simplicitor for permanent injunction.

3. The defendants opposed the suit claim and contended that plainitiffs are not owners of the suit land and alleged deed dated 7.4.1970 was in the nature of mortgage and not sale deed. They also contended that plaintiffs are not the owners of the suit land and not in possesion. They, therefore, claimed that the plaintiffs are not entitled for injunction.

4. After considering the evidence adduced by both the parties, the trial court held that plaintiffs are the owners of the suit land and they were in possession of the same on the date of the suit. The trial Court, therefore, restrained the defendants from obstructing plaintiffs possession over the suit land bearing Plot No.132 to the extent of 2 Hectare 13 Are. The said order was confirmed by the First Appellate Court.

5. The learned Advocate for the appellant/defendants tried to argue that the alleged sale ded in question is not legal and valid.

However, both the courts below have rightly held that the sale deed is legal and valid. The point with regard to mortgage was in fact not pressed by the appellants in the first appeal. So, now it does not lie in the mouth of defendants to raise any contention about the legality and validity of the said deed on the ground that the transaction was not of sale but of mortgage. Even otherwise, both the courts below have rightly held that the sal deed is legal and valid. There is concurrent finding of fact that on the date of the suit the plaintiffs were in actual possession of the suit land admeasuring 2 Hectare 13 Ares. Thus, there is no substantial question of law involved in the matter. Though it is tried to be suggested that the decree in question amounts to creating fragment of the suit plot, there is no substance in the same, considering the fact that the courts below have only held that the plaintiffs are in actual possesion of the suit land and as such defendants have no concern with the same and are not entitled to obstruct to plaintiffs possession. Hence, there is no substance in this appeal. The appeal is dismissed in limine.

(S.R.Sathe, J.)